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Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

800 Fifth Avenue #2000 • Seattle WA 98104-3188

ELECTRONIC DELIVERY VIA ECFS

May 8, 2008

ORIGINAL

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Communication in MB Docket No. 07-57 (Consolidated Application for Authority to Transfer Control of XM Satellite Radio Holdings Inc., and Sirius Satellite Radio Inc.)

Dear Ms. Dortch:

On May 7, 2008, the Attorneys General of Washington and Connecticut, Rob McKenna and Richard Blumenthal, respectively, along with staff members from Offices of the Attorneys General of Connecticut, Florida, Iowa, Maryland, Missouri, Tennessee, Texas,¹ Ohio, Washington, and Wisconsin ("the states"), met telephonically with Commissioner Jonathan S. Adelstein and Rudy Brioche, Legal Adviser for Media Issues for Commissioner Adelstein, to discuss the states' concerns regarding the proposed merger of XM and Sirius ("the licensees").

The states explained that they have a broad interest in protecting their citizens from harm due to the loss of competition. In particular, the states discussed the great public interest benefits of maintaining competition in the satellite radio industry, versus the significant harms that would result from the loss of a direct competitor, such as diminished consumer choice, reduced diversity of programming, and a lessening of innovation. The states emphasized that their concerns fall within the FCC's public interest purview and that the FCC was in the best position to address these concerns.

The states expressed concerns over the failure of the licensees to introduce into the market an available interoperable receiver. The states explained that the lack of an interoperable receiver, together with the licensees' exclusive contracts with car manufacturers, has stymied

¹ The State of Texas participated in an observational capacity and did not take an advocacy position on any issue.

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competition, is inconsistent with the FCC's requirement that such a receiver be developed to enhance consumers' ability to switch between competing providers, and has therefore harmed consumers. The states further explained that the lack of an interoperable radio is emblematic of the licensees' disregard for competition and consumers and urged that the licensees should be required to make the intellectual property for an interoperable receiver freely licensable and available for manufacturers and standards setting bodies. The states expressed disapproval of the sole source model for satellite radios, which extends the licensees' market power into the market for receiving equipment, and explained that, regardless of whether the application to transfer is approved or not, the interoperable receiver requirement should be enforced and that interoperable receivers should be made available to the public.

The states expressed support for requiring the new generation of radio receivers to be capable of receiving terrestrial audio broadcasting formats, particularly HD radio, noting that this is a propitious time to for the FCC to support the deployment of HD radio receiving equipment.

The states also stressed the significance of a diverse and robust media and the importance of maintaining a diversity of programming in satellite radio. The states emphasized that permitting one entity to have financial and editorial control over the entirety of the spectrum allocated for satellite radio would necessarily limit viewpoint diversity and the dissemination of those views to the public.

Finally, reference was made to the April 24, 2008 letter signed by the Attorneys General of Maryland, Connecticut, Ohio, and Washington (a copy of which is attached) which recommended a wholesale denial of the license transfer. In the event the application to transfer is approved, some states urged the FCC to require, as a condition precedent to the license transfer, that the licensees lease a meaningful portion of their satellite systems to another firm or firms that can provide satellite radio services that are competitive to XM and Sirius. The states also suggested that the FCC should require a mandatory set-aside of spectrum for non-commercial educational programming. The states explained that the amount of spectrum leased should be sufficient for a firm or firms to offer a commercially viable product, that the lease should include both spectrum and corresponding network infrastructure to provide satellite radio service, and that the firm or firms should be permitted to offer satellite radio service with or without charge to consumers who own a Sirius or XM receiver. The states stressed that any such leasing proposal serves the public interest because it promotes diversity of ownership in satellite radio, enables rural areas that may have limited access to terrestrial radio to have continued access to a wide array of radio broadcasting, and enables consumers who have purchased an XM or Sirius receiver, but do not currently subscribe to XM or Sirius, to make use of that receiver. Additionally, the states emphasized that they were not advocating for any particular firm or firms to provide such a service, and that a leasing solution should be implemented in an open environment by soliciting competitive proposals from firms or organizations that may wish to participate in any leasing solution.

Pursuant to Section 1.1206(b) of the Commission's Rules, an original and one copy of this letter are being submitted to the Secretary's office, with a copy to Commissioner Adelstein

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and Mr. Brioché. In addition, a copy of this letter is being filed electronically for inclusion in the public record of these proceedings.

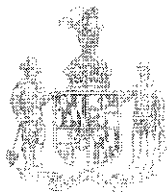
Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan A. Mark", with a long, sweeping horizontal line extending to the right.

Jonathan A. Mark
Assistant Attorney General

JAM: krd
Enclosure

DOUGLAS F. GANSLER
Attorney General



KATHARINE WINTREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

Telephone No.

(410) 576-7830

Writer's Direct Dial No.

(410) 576-6470

April 24, 2008

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Application of XM Satellite Radio Holdings Inc. and Sirius Satellite Radio
Inc. for Authority to Transfer Control. MB Docket No. 07-57

Dear Chairman Martin:

This letter is submitted by the Attorneys General of Maryland, Connecticut, Ohio and Washington regarding the proposed transfer of licenses requested by Sirius Satellite Radio Inc. ("Sirius") and XM Satellite Radio Holdings Inc. ("XM") to effect their intended merger.

We believe that the proposed merger poses a threat to competition and are concerned that subscribers of the combined XM and Sirius may face the dual harms presented by anticompetitive mergers: higher prices and diminished quality of service. Ordinarily, these concerns are resolved by the presence of competitors that discipline prices and drive innovation. However, the proposed merger will eliminate the only major competition that has disciplined these firms to date. Because this result is incompatible with the public interest, we urge the FCC to reject the application submitted by Sirius and XM that would permit the merger to go forward.

The result we urge is also consistent with the FCC's 1997 rulemaking concerning Satellite Digital Audio Radio Service ("SDARS"). At the conclusion of that proceeding, the FCC provided that "[e]ven after SDARS licenses are granted, one licensee will not be permitted to acquire control of the other remaining satellite DARS license. This prohibition on transfer of control will help assure sufficient continuing competition

in the provision of satellite DARS service.” *Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band Report and Order*, 12 FCC Red. 5754, 5823 at para. 170 (March 3, 1997) (“*SDARS Report and Order*”). We do not believe that conditions have changed since the FCC’s 1997 ruling to merit reversal of this decision.

Should the FCC approve the proposed merger, the only way it can preserve valuable competition is to introduce a new competitor to the SDARS arena. Thus, we urge that the FCC require XM and Sirius to lease a portion of their satellite capacity, and the means to broadcast from the Sirius and XM satellites, as a precondition to approving their request to transfer licenses.

The leasing solution we advocate is preferable to a simple divestiture of spectrum by Sirius and XM. Construction and launch of satellites to carry a competing SDARS service will require several years. On the other hand, a SDARS service created through leasing spectrum can be made available much more quickly, and the resulting public benefit felt much sooner.

The FCC should permit this lease to be held by a firm that will offer SDARS without charge to listeners. This approach would serve the public interest by ensuring that consumers who purchased a receiver for XM or Sirius but no longer desire to subscribe to satellite radio will still have a use for the receiver. Second, it will ensure that people living in rural areas that are served by only a few radio stations have access to a wide array of broadcasting. Finally, it allows purchasers of vehicles equipped with satellite radio receivers that did not chose to purchase a SDARS subscription to enjoy the benefits of ubiquitous radio service as they travel.

This leasing solution, or any other solution that creates a new provider of SDARS, can only occur in a timely fashion if the Commission requires that Sirius and XM provide the FCC with evidence, prior to approving the application of XM and Sirius, that they have actually negotiated a lease with terms sufficient to permit a firm to offer SDARS. XM and Sirius have already provided alarming evidence of their willingness to flout the mandates of the FCC by their failure to make available to the public a SDARS receiver that is capable of receiving the signals of each firm. As a result, we urge the FCC to make any approval of the license transfer application conditional on negotiating a lease with a firm or firms that will offer a viable competitive choice to consumers. Such a requirement would assure that control over SDARS programming never vests in one SDARS monopolist.

The Honorable Kevin J. Martin
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Thank you for your consideration of this matter.

Very truly yours,



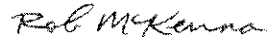
Attorney General Douglas F. Gansler
State of Maryland



Attorney General Richard Blumenthal
State of Connecticut



Attorney General Marc Dann
State of Ohio



Attorney General Rob McKenna
State of Washington

cc: The Honorable Michael J. Copps, Commissioner
The Honorable Jonathan S. Adelstein, Commissioner
The Honorable Deborah Taylor Tate, Commissioner
The Honorable Robert M. McDowell, Commissioner